Supreme Court, U.S.
FILED
APR 18 1980
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-1474

AMERICAN AMUSEMENT COMPANY, INC.,
a Michigan corporation,

Appellant,

vs.

DEPARTMENT OF REVENUE,
STATE OF MICHIGAN,

Appellee,

HARRY V. MOHNEY,

Appellant,

vs.

DEPARTMENT OF REVENUE,
STATE OF MICHIGAN,

Appellee.

On Appeal from the Supreme Court of the State of Michigan

MOTION TO DISMISS OR AFFIRM

FRANK J. KELLEY
Attorney General

Robert A. Derengoski
Solicitor General

Richard R. Roesch
Assistant Attorney General

Attorneys for Appellee

Business Address:
760 Law Building
Lansing, MI 48913
Phone: (517) 373-1124

PRINTED BY SPEAKER-HINES AND THOMAS, INC., LANSING, MICHIGAN—1980

TABLE OF CONTENTS

	Page
INDEX OF AUTHORITIES	ii
I. THE STATE STATUTORY PROVISION INVOLVED AND THE NATURE OF THE CASE	2
A. The State Statutory Provision	2
B. The Proceedings Below	3
II. ARGUMENT	4
THE CASE PRESENTS NO SUBSTANTIAL FEDERAL QUESTION	4
III. CONCLUSION	7

INDEX OF AUTHORITIES

Cases	Page
Allied Stores of Ohio v Bowers, 358 US 522; 79 S Ct 437; 3 L Ed 2d 480 (1959)	5
American Sugar Refining Co v Louisiana, 179 US 89; 21 S Ct 43; 45 L Ed 102 (1909)	5
Bell's Gap R Co v Pennsylvania, 134 US 232, 237; 10 S Ct 533; 33 L Ed 892, 895 (1899)	5
Brown-Forman Co v Kentucky, 217 US 563, 573; 30 S Ct 578; 54 L Ed 883 (1909)	5
Carmichael v Southern Coal & Coke, 301 US 495; 57 S Ct 868; 81 L Ed 1245 (1936)	5
Heisler v Thomas Colliery Co, 260 US 245, 255; 43 S Ct 83; 67 L Ed 237, 241 (1922)	5
Kahn v Shevin, 416 US 351; 94 S Ct 1734; 40 L Ed 2d 189 (1974)	5
Lehnhausen v Lake Shore Auto Parts Co, 410 US 356, 364; 93 S Ct 1001; 35 L Ed 2d 351 (1973)	4
Magoun v Illinois Trust & Sav Bank, 170 US 283, 293; 18 S Ct 594; 42 L Ed 1037 (1897)	5
Ohio Oil Co v Conway, 281 US 146, 159; 50 S Ct 310; 74 L Ed 775, 781 (1929)	5
Oliver Iron Mining Co v Lord, 262 US 172, 179; 43 S Ct 526; 67 L Ed 929, 936 (1922)	5
Quong Wing v Kirkendall, 223 US 59; 32 S Ct 192; 56 L Ed 350 (1912)	5
Southwestern Oil Co v Texas, 217 US 114, 121; 30 S Ct 496; 54 L Ed 688, 692 (1909)	5
State Tax Comrs v Jackson, 283 US 527, 537; 51 S Ct 540; 75 L Ed 1248 (1930)	5
Stebbins v Riley, 268 US 137, 142; 45 S Ct 424; 69 L Ed 884 (1924)	5

Statutes Cited	Page
1937 PA 94, as amended; MCLA 205.91 *et seq;* MSA 7.555(1) *et seq*	2, 4
1937 PA 94, § 4(o); MCLA 205.94(o); MSA 7.555(4)(o)	2
Miscellaneous	
United States Supreme Court Rule 16	1
U.S. Const. Art I, § 8, Clause 8	6
U.S. Const. Amend. XIV	3
Michigan Const. 1963, Art 9, § 3	3, 6

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-1474

AMERICAN AMUSEMENT COMPANY, INC.,
a Michigan corporation,

Appellant,

vs.

DEPARTMENT OF REVENUE,
STATE OF MICHIGAN,

Appellee,

HARRY V. MOHNEY,

Appellant,

vs.

DEPARTMENT OF REVENUE,
STATE OF MICHIGAN,

Appellee.

On Appeal from the Supreme Court of the State of Michigan

MOTION TO DISMISS OR AFFIRM

Pursuant to United States Supreme Court Rule 16, Appellees move that Appellants' appeal from the Opinion of the Michigan Court of Appeals (JS B1-B6)[1] and from an Order of the Michigan Supreme Court denying leave to appeal, entered December 14, 1979 (JS A1-A2), be dismissed on the following grounds:

---

[1] Unless otherwise indicated, numbers in parentheses preceded by "JS" will refer to pages of Appellants' Jurisdictional Statement.

1. That the appeal does not present a substantial federal question; and

2. That the Opinion of the Michigan Court of Appeals is conclusive.

In the alternative, Appellees move that the opinion be affirmed on the grounds that it is manifest that the question on which the decision of this cause depends is so insubstantial as to need no further argument.

I.

THE STATE STATUTORY PROVISION INVOLVED AND THE NATURE OF THE CASE.

A. The State Statutory Provision.

The sole issue presented by this appeal is whether the Michigan use tax[2] contains an unconstitutional classification violating the equal protection clause of the Fourteenth Amendment of the Constitution of the United States because it grants an exemption from tax for the use, storage, and consumption of copyrighted motion-picture films, but contains no similar exemption for the use, storage and consumption of non-copyrighted motion-picture films. Stated alternatively, this appeal draws into question the authority of the Michigan legislature to except from the taxable subject matter of its use tax a class of property defined as "copyrighted motion-picture films."

Section 4(o) of the Michigan Use Tax Act [MCLA 205.94(o); MSA 7.555(4)(o)] exempts from the tax levied upon the use, storage and consumption of tangible personal property:

---

[2] 1937 PA 94, as amended; MCLA 205.91 *et seq;* MSA 7.555(1) et seq.

"Newspapers and periodicals, as admitted under present federal postal laws and regulations as second class mail matter or as controlled circulation publications or qualified to accept legal notices for publication in this state, as defined by law, or any other newspaper or periodical of general circulation, established at least 2 years, and published at least once a week, and copyrighted motion-picture films. All tangible personal property used or consumed and not becoming a component part of newspapers and periodicals, and copyrighted motion-picture films is subject to tax."

The foregoing exemption was added to the Michigan use tax by 1950 PA 7 and in its original version the exemption simply read:

"Newspapers and periodicals, as admitted under present federal postal laws and regulations as second class mail matter, and copyrighted motion picture films."

B. The Proceedings Below.

Appellants brought suit in the Michigan Court of Claims for refund of use taxes assessed and paid for the privilege of using, storing and consuming non-copyrighted motion-picture film. The sole contention advanced by the appellants postulated that the distinction between copyrighted and non-copyrighted motion-picture films which inhered in the restriction of the tax exemption to copyrighted motion-picture film was arbitrary, unreasonable, capricious, discriminatory, irrational, and illogical; and that it violated the Equal Protection Clause of U.S. Const. Amend. XIV and the Uniformity Clause of Michigan Const 1963, art 9, § 3.

The Court of Claims agreed "with plaintiffs that the distinction between copyrighted and non-copyrighted films for tax

exemption purposes is unconstitutional ° ° °." (JS C4) Nevertheless, the Court denied refund of the tax by striking the exemption for copyrighted motion-picture films from the statute.

On appeal, the Michigan Court of Appeals upheld the trial court's judgment denying plaintiffs' claims for refund of the use tax. However, it concluded "that the distinction between copyrighted and non-copyrighted films in the Michigan use tax is supported by a rational basis and thus comports with the requirements of the Equal Protection Clause." (JS B6)

The appellants sought leave to appeal which was considered by the Michigan Supreme Court and was "° ° ° DENIED because the Court is not persuaded that the question presented by appellants should be reviewed." (JS A2)

II.

ARGUMENT

THE CASE PRESENTS NO SUBSTANTIAL FEDERAL QUESTION.

The Michigan Court of Appeals noted (JS B5) that the plaintiffs failed to meet their burden to "negative every conceivable basis which might support" [*Lehnhausen* v *Lake Shore Auto Parts Co*, 410 US 356, 364; 93 S Ct 1001; 35 L Ed 2d 351 (1973)] the classification in the Use Tax Act. Further, it stated (JS B5, B6):

> "The different treatment between copyrighted and non-copyrighted films may be upheld on a number of different grounds. Since copyright protection extends only to 'original works of authorship' 17 USC 102(a) (1976), exempting copyrighted films from the Michigan use tax

> tends to promote originality and thereby advances knowledge generally. Further, by encouraging one to copyright one's films, the use tax exemption promotes the development of a centralized body of information relating to the ownership of motion picture films. Neither of these grounds have in any way been refuted by plaintiffs. We therefore conclude that the distinction between copyrighted and noncopyrighted films in the Michigan Use Tax is supported by a rational basis and thus comports with the requirements of the equal protection clause."

There are a host of cases decided by this Honorable Court which uphold reasonable classification for tax purposes. Among such cases are all of the 5 cases[3] cited by the appellants as well as *Bell's Gap R Co* v *Pennsylvania*, 134 US 232; 237; 10 S Ct 533; 33 L Ed 892, 895 (1899); *Magoun* v *Illinois Trust & Sav Bank*, 170 US 283, 293; 18 S Ct 594; 42 L Ed 1037 (1897); *Southwestern Oil Co* v *Texas*, 217 US 114, 121; 30 S Ct 496; 54 L Ed 688, 692 (1909); *Brown-Forman Co* v *Kentucky*, 217 US 563, 573; 30 S Ct 578; 54 L Ed 883 (1909); *Heisler* v *Thomas Colliery Co*, 260 US 245, 255; 43 S Ct 83; 67 L Ed 237, 241 (1922); *Oliver Iron Mining Co* v *Lord*, 262 US 172, 179; 43 S Ct 526; 67 L Ed 929, 936 (1922); *Stebbins* v *Riley*, 268 US 137, 142; 45 S Ct 424, 69 L Ed 884 (1924); *Ohio Oil Co* v *Conway*, 281 US 146, 159; 50 S Ct 310; 74 L Ed 775,

---

[3]

Allied Stores of Ohio v *Bowers*, 358 US 522; 79 S Ct 437; 3 L Ed 2d 480 (1959).

American Sugar Refining Co v *Louisiana*, 179 US 89; 21 S Ct 43; 45 L Ed 102 (1909).

Carmichael v *Southern Coal and Coke*, 301 US 495; 57 S Ct 868; 81 L Ed 1245 (1936).

Kahn v *Shevin*, 416 US 351; 94 S Ct 1734; 40 L Ed 2d 189 (1974).

Quong Wing v *Kirkendall*, 223 US 59; 32 S Ct 192; 56 L Ed 350 (1912).

781 (1929); *State Tax Comrs* v *Jackson*, 283 US 527, 537; 51 S Ct 540; 75 L Ed 1248 (1930).

There clearly is a substantial and significant difference between copyright material and non-copyright material. Copyright is a subject matter recognized by the United States Constitution which invests Congress with power to promote the progress of science and useful arts by securing for limited times to authors the exclusive right to their writings.[4] There exists a considerable body of law dealing with copyright.

The Michigan legislature sought to exempt a class of motion-picture films which were worthy of and subject to the copyright ~~production~~ protection and privilege. The conclusion is inescapable that, under all existing precedents, it had the authority to select copyrighted motion-picture films as the beneficiary of its use tax exemption. The legislative power of classification was exercised in a manner consistent with the equal protection clause of the federal constitution.

The appellants also allege (JS 8) that the classification in question violates the Michigan Constitution, Article 9, Section 3. This "state question" was conclusively adjudged against the appellants by the Michigan Court of Appeals (JS B6), which footnoted that:

> "* * * for the same reasons that the classification here was upheld against the equal protection challenge, no violation of the uniform taxation clause is present here."

The jurisdictional statement does not present any substantial federal question. It is so wanting in substance, in view of previous decisions of this Court sanctioning reasonable classifications for tax purposes as to warrant no further argument.

---

[4] United States Constitution, Article 1, Section 8, Clause 8.

III.

CONCLUSION

WHEREFORE, Appellees respectfully submit that the question upon which this cause depends is so unsubstantial as not to need further argument, and Appellees respectfully move the Court to dismiss this appeal, or, in the alternative, to affirm the order entered in the cause by the Supreme Court of the State of Michigan.

Respectfully submitted,

FRANK J. KELLEY
Attorney General

Robert A. Derengoski
Solicitor General

Richard R. Roesch
Assistant Attorney General

Attorneys for Appellees

Business Address:
760 Law Building
Lansing, MI 48913
Phone: (517) 373-1124

Date: April 16, 1980